

No. 99-1625EA

Appellees.

On Appeal from the United
States District Court
for the Eastern District
of Arkansas.

[Not To Be Published]

Filed: January 25, 2000

PER CURIAM.

Ben S. Garner, an Arkansas prisoner, appeals the District Court's¹ dismissal of his 42 U.S.C. § 1983 action without prejudice. We affirm.

Garner filed this action against a state circuit judge and a prosecutor, claiming they falsely charged him with possession of a controlled substance and withheld or disregarded evidence at his criminal trial. Garner also named his court-appointed attorney (a public defender), claiming he failed to counsel him. He requested damages and asked that the court overturn his guilty plea. On appeal, he has moved for appointment of counsel and an evidentiary hearing. We deny those motions.

Upon de novo review, see Gordon v. Hansen, 168 F.3d 1109, 1113 (8th Cir. 1999) (per curiam), we conclude the District Court properly dismissed Garner's action. First, judge and prosecutor are immune from this action for damages. Second, Garner failed to state a section 1983 claim against the public defender, because the public defender was not acting under color of state law when representing Garner. See Polk County v. Dodson, 454 U.S. 312, 325 (1981). Last, Garner could not seek to overturn his guilty plea in this action. See Preiser v. Rodriguez, 411 U.S. 475, 500 (1973).

Accordingly, we affirm.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.

¹The Honorable James Maxwell Moody, United States District Judge for the Eastern District of Arkansas.